be set asde or annulled by an order of court provided such order is applied for within 12 months from the date of the sale. No such order has been applied for or obtained by the plaintiff/appellant. It is in this context that the respondent has raised the defence that the claim is statute-barred. Strictly speaking, a defence of limitation is usually raised against a claim founded on a cause of action which however good it may be is barred by the statute of limitation because the claim is not made within the time prescribed by the Statute. Section 9 of the Limitation Ordinance 1953 prescribes a period of 12 years within which a claim for recovery of lands has to be made. Subsection 2(b) of the said section, however, provides that the Section shall not apply to "any person registered under or by virtue of the provisions of the Land Code of the Federated Malay States or of any corresponding Land Enactment in force in any State as the proprietor of the land sought to be recovered .... except to the extent in such Code or Enactment so provides or permits." Section 3 of the Limitation Ordinance further provides that the Ordinance shall not apply to any action for which a period of limitation is prescribed by any other written law.

In the course of arguments it was contended on behalf of the respondents that section 193(iii) applies. If it does, this can only mean that when the plaintiff's action was filed in November 1970 the plaintiff had no cause of action against any of the defendants. The plaintiff's right to recover the lands from the defendants was lost when she failed to apply for or obtain a court order to annul the sale under section 193(iii) of the Enactment. The sales were finalised or completed on the 29th July, 1963. On that date the respondents were registered as purchasers. The evidence of the Assistant Collector of Land Revenue, Kota Bharu was to this effect. The plaintiff/appellant filed her action some 7 years after the sales. By that time the Kelantan Land Enactment was already repealed by the National Land Code. It was repealed with effect from 1st January, 1966. In these events it would be correct to say that inasmuch as there was no longer any right existing to have the sales annulled immediately before the repeal of the Kelantan Land Enactment took effect the right is not revived merely because of the repeal. Section 29 of the Interpretation Act No. 23 of 1967 is to this effect. The trial judge, in my view, erred in holding that the claim is not statute-barred. He should have dismissed the claim against both defendants on the ground that there was no cause of action.

In the result I would dismiss the plaintiff's appeal with costs and allow the defendants' cross-appeal with costs.

Wan Suleiman F.J. concurred.

Appeal dismissed.

Solicitors: *C. Jegathesan; Wrigglesworth & Co.*

PUBLIC PROSECUTOR v. LEE CHIN CHAI

[F.C. (Gill C.J., Ali and Ong Hock Sim F.JJ.) October 4, 1974]

[Kuala Lumpur — Federal Court Criminal Reference No. 1 of 1974]

Fisheries Act, 1965 — Possession of fishing appliances without a licence — Whether vessel in which fishing appliances were found liable to seizure and forfeiture.

In this case the accused had pleaded guilty to two charges of possession of fishing appliances without a licence and possession of fish allegedly caught with the aid of explosives. The vessel in which the fishing appliances was found had been detained and the learned magistrate after an inquiry made an order for the return of the vessel to the owner. On appeal by the Public Prosecutor, it was held in the High Court ([1974] 1 M.L.J. 205) that the vessel was not subject to seizure and forfeiture under the Fisheries Act, 1965. The Public Prosecutor applied for the matter to be referred to the Federal Court and the following question of law of public interest was referred to the Federal Court—

> "Whether a vessel in which 'fishing appliances' are found contrary to Regulation 3(b) of the Fisheries (Maritime) Regulations, 1967, is a thing in respect of which an offence has been committed contrary to the provisions of the Act or any regulations or rules made thereunder, and thereby liable to seizure under section 14(1) of the Fisheries Act, 1963 (as amended by Act A152 of 1972) and consequently liable to forfeiture under section 15(1) of the Fisheries Act 1963 (as amended by Act A152 of 1972).

Held: what may be seized under section 14 of the Fisheries Act are only things in respect of which an offence has been committed and as Regulation 3(b) of the Fisheries (Maritime) Regulations, 1963, makes it an offence to possess fishing appliances without a licence, only these can be the subject matter of an offence and the vessel in which they are found is not included. Therefore the question reserved for the court must be answered in the negative.

Cases referred to:-

(1) *Tan Khoo Chor* v. *Public Prosecutor* [1941] M.L.J. 160.

(2) *Williams* v. *Wynne* L.J. (N.S.) Vol. 57 Mag. Cas. 30.

FEDERAL COURT.

Lamin bin Haji Yunus (Deputy Public Prosecutor) for the appellant.

A. Wilson for the respondents.

Ong Hock Sim F.J. (delivering judgment of the Court): This is a Reference under section 66 of the Courts of Judicature Act, 1964 (Act 91 — Revised 1972) on the application of the Public Prosecutor, reserving for the decision of this court the following question of law of public interest:

> "Whether a vessel in which 'fishing appliances' are on board contrary to Regulation 3(b) of the Fisheries (Maritime) Regulations, 1967 is *a thing in respect of which an offence has been committed* contrary to the provisions of the Act or any regulations or rules made thereunder, and thereby liable to seizure under section 15(1) of the Fisheries Act, 1963 (as amended by Act No. A152 of 1972) and consequently liable to forfeiture under section 15(1) of the Fisheries Act, 1963 (as amended by Act No. A152 of 1972)."

The first respondent, a twenty-five year old Singaporean, was captain of a vessel bearing Fishing Boat Licence No. 00933, issued presumably under Fishing Vessels (Control and Licensing) Rules, 1969, Singapore. He had Fishing Gear Licence No. 00585/26 February 1972 and a proper Port Clearance Document. All these went to show in our view an absence of *mens rea* or intention to contravene the Fishery Laws of this country when they entered territorial waters.

Their explanation for doing so was "because we were on our way to report to police in Pulau Redang after we were robbed on 31 May 1973 in the night... of our foodstuff, fishing nets and money." The vessel, though old, is valued between $7,000 to $8,000. Though the explanation for their presence was not controverted or challenged, the respondent and six members of his crew were charged in the Magistrate's Court at Kuala Trengganu on June 24, 1973 on two charges (we set out only the first charge, which is material to this Reference (the second charge concerned only possession of fish allegedly caught with the aid of explosives)):

"That you jointly on the 1st day of June, 1973, at about 8.15 a.m. at position bearing Latitude 05° 46 mins. 55 secs. North and Longitude 103° 03 mins. 50 secs. East, ½ mile off Kuala Trengganu Coast in Malaysian Maritime Territorial Waters, in the District of Kuala Trengganu, in the State of Trengganu, did have in your possession fishing appliances without a licence from the Director of Fisheries, in a Singapore Fishing Boat No. SMF. 465 and that you have thereby committed an offence under Regulation 3(b) of the Fishing (Maritime) (Amendment) Regulation, 1967 P.U. 49 and punishable under section 13(i) of the Fisheries Act No. 8 of 63."

To these charges the respondents pleaded guilty and were fined $100 each in default 2 weeks' imprisonment on each charge. As is accepted, piracy is a crime *jure gentium*. Having regard thereto and on the facts as stated, it may well appear to some, to put it mildly, a little harsh to charge them for what, if at all they are offences, are surely technical. Having regard to section 19A that jurisdiction is conferred on our courts in respect of offences outside territorial waters only where citizens or persons ordinarily resident in Malaysia are involved, it may be that the pleas of guilt should not have been accepted. That is, however, not the matter posed before this court.

Anyway, subsequent to this trial, the Magistrate purported to hold an Inquiry as to the disposal of exhibits, presumably under section 407 of the Criminal Procedure Code (F.M.S.) and at the conclusion thereof ordered the release of the vessel to the owner and forfeiture of the other exhibits. The learned Deputy Public Prosecutor appealed against the order of release of the vessel, one ground being that the learned Magistrate erred in law in holding an inquiry as he had no discretion, confiscation being made mandatory by virtue of a recent amendment to the Fisheries Act, 1963. Where there exist provisions in a law providing for forfeiture, it is not right to have recourse to section 407 of Criminal Procedure Code, see *Tan Khoo Chor* v. *Public Prosecutor*[1] the headnote of which reads:

"Section 407 of the Criminal Procedure Code does not contain a general power of forfeiture: that section applies only when a right of forfeiture exists;".

On appeal the learned judge, after observing that "there is not any serious controversy that forfeiture is mandatory..." if satisfied that there was compliance with sections 14 and 15 of the Act, then took the point not raised in the court below as to the subjects which can be forfeited under section 15(1)(b) which reads:

"(b) that the thing was *the subject matter of* or was *used in the commission of* the offence notwithstanding that no person may have been convicted of such offence."

He next quoted Regulation 3(b) of the Fisheries (Maritime) Regulations, 1967 (P.U. 49) as amended by P.U. 387 of 1967. It reads:

"No person shall —

(b) have in his possession on board a vessel any fishing appliances or any part thereof;".

He went on to observe that the definition of "fishing appliances" in Regulation 2 does not include "vessel" and concluded that the subject matter of an offence under Regulation 3(b) was limited to fishing appliances.

Regulation 3(b) was enacted by the Minister pursuant to section 2(b) of the Act "to regulate or prohibit", *inter alia*, *"the possession in a vessel of traps or fishing nets"*. Prior to P.U. 387/67 Regulation 3 was as follows:

"3. No person shall operate, or permit or cause to be operated, any fishing stakes or appliances or set up any fishing stakes *unless there is in force in respect of such stakes or appliances* a licence or permit as the case may be granted under these Regulations."

It will be noted the prohibition was directed against unlicensed fishing stakes or appliances. That regulation was thought probably *ultra vires* section 2(b) (above), which was intended to make *possession in a vessel only* of unlicensed fishing stakes or appliances an offence. P.U. 387/67 under the heading of Prohibition, with marginal note, we now set out:

Prohibition

"Licence to operate fishing stakes and appliances

3. No person shall —

(a) operate or permit or cause to be operated any fishing stakes or appliances;

(b) have in his possession on board a vessel any fishing appliances or any part thereof; or

(c) set out any fishing stakes.

unless there is in force in respect of such stakes or appliances a licence or permit."

Both before the judge and before us, the arguments urged for forfeiture of the Fishing Boat No. SMF 465 were because the offence of possession on board a vessel of unlicensed fishing appliances necessarily implicated or involved the vessel as it could not have been committed without use of a vessel. These tend to miss the wood for the trees for both under the old Regulation and the new, it is only an offence *unless there is in force in respect of such stakes and appliances* a licence or permit. It is clear that the vessel, though in a sense connected with the offence of possession of unlicensed fishing appliances by reason of their presence on board, was not itself the subject of any direct prohibition.

We now set out the provisions relevant to this Reference. They are:

"Section 14(1) All vessels, vehicles, nets, instruments, fishing materials, appliances, fish or fishing stakes *in respect of which* any Fishery Officer or any police officer not below the rank of corporal has reason to believe that an offence has been committed contrary to the provisions of this Act or any regulations or rules made thereunder *may be seized* by such officer without warrant.

(3) All things liable to seizure under this section .... shall be liable to forfeiture." (unchanged).

"Section 15(1) An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been held and *an order for the forfeiture of such thing* shall be made *if it is proved* to the satisfaction of the court that—

(a) *an offence* contrary to the provisions of this Act or any regulations or rules made thereunder *has been committed; and*

(b) (i) *that thing was the subject matter of,* or (ii) *was used in the commission of,* the offence notwithstanding that no person may have been convicted of such offence."

The amendments were made by Act 152/72 and came into force on 13 October 1972. We think, though we are of the view that the language does not require consideration of the previous wording for purpose of construction, it will confirm our opinion that we cannot uphold the contention of the appellant. We set out those provisions:

"Section 14. Any vessels, vehicles, stakes, nets, instruments or appliances *used in the commission of any offence* against this Act or of any regulations or rules made thereunder and any fish caught in contravention of the provisions of this Act or of any regulations or rules made thereunder *may be forfeited* to the Director of Fisheries and, if so forfeited, shall be disposed of in such manner as the Director of Fisheries may direct."

"Section 16. (1) A magistrate *may order* the confiscation of any vessels, vehicles, stakes, nets, instruments or appliances *used in the commission of any offence.*"

It may be noted, as a start, that under the old law, forfeiture was discretionary under section 16. It is now mandatory under section 15 if *such thing* seized under section 14 — the marginal note of which reads "Seizure and forfeiture of vessels, etc." — after it has been shown that an offence has been committed *is proved* to have been *"the subject matter of the offence" or* as is posed in the question before this court to be *a thing in respect of which an offence has been committed.*

It would therefore be necessary to determine in the first instance whether this boat was the subject matter of an offence contrary to the Act or regulations made thereunder. While it may be liable to seizure under section 14 by reason of the presence of nets, instruments, fishing appliances and stakes on board, the conditions for forfeiture in *section 15 require proof* to the satisfaction of the court *that* (a) *an offence* contrary to the Act or any regulations or rules made thereunder *has been committed; and* (b) that *the thing was the subject matter of such offence.*

In our view, in terms of the Reference the words "or was used in the commission of" cannot be imported to justify the exercise of a right to forfeit. The deletion of those words both in section 14 and the repeal of the old section 16 relating to confiscation make their presence in section 15(1)(b) meaningless, since used in the commission of the offence is no longer a ground for seizure under section 14 and therefore rendering the thing liable to forfeiture. What may be seized are only things *in respect of which an offence has been committed* and are covered by *"the subject matter of"*. These words were construed in the case of *Williams* v. *Wynne*[2] and, in our opinion, Regulation 3(b) only makes it an offence to *possess* fishing appliances *without a licence* and only these can be the subject matter of an offence and does not include the vessel on which they are found. We repeat that it is true a vessel has to be used, so also for the purpose of setting up fishing stakes and catching fish by poisonous or explosive substances. We find no exposure to the penalty of forfeiture of the vessel in those instances. Subsequent legislation, to give two examples, also show the drift to restrict forfeiture to the subject matter of the offence. We refer to:

1. P.U.(A) 187 of 1971 entitled the Fisheries (Prohibition of Method of Fishing) Regulations, 1971:

"2. No person shall use for the purpose of fishing or have in his possession on board any vessel, *any fishing net or trap* described in the Schedule hereto.

SCHEDULE

Any fishing net, used with boat propelled by engine, called by whatever name which consists of a triangular net supported between two poles which are crossed and secured some distance from the top and each of them tapers from this point to end in a ski-shaped shoe, being of a kind normally operated by pushing or thrusting the gear along the seabed before raising."

2. P.U.(A) 243 of 1974:

"Section 15 of the principal Act is hereby amended by substituting for paragraph (a) of subsection (1) the following—

(a) the offence committed is for—

(i) using *any net, instrument, fishing material or appliance* which is *prohibited* by or under this Act or any regulations or rules made thereunder; or

(ii) doing or carrying on *an act without a licence* or permit *required* under this Act or any regulations or rules made thereunder; *and.*"

For the reasons we have set out, we would answer the question in the negative and affirm the decision of the learned judge dismissing the appeal and releasing the said vessel.

Order accordingly.

Solicitors: *Wilson & Co.*